Decision for dispute CAC-UDRP-101757

Case number	CAC-UDRP-101757
Time of filing	2017-11-30 10:08:16
Domain names	remplanor.org

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	REMPLANOR

Complainant representative

Name	Marie FERNET

Respondent

Organization	CATAPULTE

OTHER LEGAL PROCEEDINGS

On 7 December 2017 the Tribunal de Grande Instance de Paris denied a request of the Complainant to issue an interim injunction against the Respondent's use of the disputed domain name. The Court based its (preliminary) decision on the arguments that the Complainant had neither (i) demonstrated its "better" rights regarding the disputed domain name nor (ii) the risk of imminent damages justifying an interim court order (case no. 17/59657).

IDENTIFICATION OF RIGHTS

The Complainant does not claim to own any registered trademark or service mark related to the name "REMPLANOR".

The Complainant also does not claim to own any unregistered trademark or service mark related to the name "REMPLANOR". The Panel is aware that the Complainant's name is "REMPLANOR", but also notes that section 4.a.(i) of the Policy explicitly requires "a trademark or service mark" for the Complainant to prevail (unlike, for example, Article 21(1) of the European Commission Regulation (EC) No 874/2004, which merely requires "a name in respect of which a right is recognised or established by national and/or Community law"). It is generally possible that personal or company names acquire the status of an unregistered trademark or service mark (cf. section 1.3 and 1.5 of the WIPO Jurisprudential Overview 3.0). In the past both the Complainant's general activities and the website for which the disputed domain name has been used were exclusively targeted at the French market, so that the potential creation of an unregistered trademark or service mark would have to be assessed in accordance with French law. French law, however, does not recognise unregistered trademarks or service marks unless they are well-known in accordance with Article 6bis of the Paris Convention

for the Protection of Industrial Property. The Complainant has not provided any evidence that would suggest that “REPLANOR” is well known in France to the extent required by Article 6bis.

The Panel therefore concludes that the Complainant does not own any (registered or unregistered) trademark or service mark related to the name “REMPLANOR”.

FACTUAL BACKGROUND

The Respondent registered the disputed domain name on 27 September 2012. The Complainant, an association under French law, was formally registered on 27 October 2012. Since that time the Complainant and the Respondent have co-operated to create and operate a website for medical doctors under the disputed domain name. The details of this co-operation, and the parties’ respective roles and responsibilities in it, are disputed between the Complainant and the Respondent.

In 2017 the relationship between the Complainant and the Respondent deteriorated. On 29 July and on 29 August 2017 the Complainant sent two letters to the Respondent to terminate their contractual relationship. After this termination a dispute ensued regarding the ownership and use of the disputed domain name, and also regarding a database of registered website users which the Respondent had collected during the parties’ co-operation.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that it ordered and paid for both the disputed domain name and the corresponding website, and that the Respondent acted as a mere technical service provider on behalf of the Complainant.

RESPONDENT:

The Respondent disagrees with this view and states that the Respondent and not the Complainant had the initial idea to create the REMPLANOR website. The Respondent claims that it had first presented this idea to the regional union of health professionals, which then decided to set up the Complainant’s association. According to the Respondent the Respondent itself was the website “owner”, whereas the Complainant was only entrusted with “managing” the website.

RIGHTS

The Complainant has not shown that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

As the Complaint already fails to meet the first of the three cumulative requirements stipulated in paragraph 4(a) of the Policy, it is not necessary to discuss whether the Respondent has rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

As the Complaint already fails to meet the first of the three cumulative requirements stipulated in paragraph 4(a) of the Policy, it is also not necessary to discuss whether the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

The language of the disputed domain name's registration agreement is French. The Complainant has, however, requested to change the language of the proceeding to English. The Respondent has not objected to this request, and all relevant parts of the case file – including the Complaint and the Response – are in English language. Having regard to the circumstances of the administrative proceeding the Panel therefore determines that the language of the administrative proceeding shall be in English (paragraph 11 UDRP Rules).

Both parties have submitted unsolicited supplemental filings in this proceeding. While such supplemental filings are generally discouraged (unless specifically requested by the panel), the Panel has nevertheless decided to note their content, but found them irrelevant for the decision.

PRINCIPAL REASONS FOR THE DECISION

As discussed above, the Complainant neither claims nor appears to have a trademark or service mark related to the name "REMPLANOR". In the absence of such trademark or service mark rights the Complaint cannot be successful.

It appears to the Panel that the dispute between the parties is primarily a question of contract law and/or fiduciary duties. This type of dispute is outside the limited scope of the Policy. Should the parties decide to take this dispute further it will have to be decided in main proceedings (i.e. not merely interim proceedings like the one mentioned above) before the national French courts.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **REMPLANOR.ORG**: Remaining with the Respondent

PANELLISTS

Name	**Dr. Thomas Schafft**

DATE OF PANEL DECISION 2018-02-04

Publish the Decision